

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**BRADLEY and KIMBERLY ALLEN**

**Plaintiffs,**

**v.**

**HORACE MANN LLOYDS and  
AMERICAN TECHNOLOGIES, INC.**

**Defendants.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**No.** \_\_\_\_\_

**DEFENDANT HORACE MANN LLOYDS' NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Horace Mann Lloyds (referred to herein as “Horace Mann” or “Defendant”) files this Notice of Removal to the United States District Court for the Northern District of Texas, Dallas Division, on the basis of diversity of citizenship and amount in controversy and respectfully shows:

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On May 15, 2015, Plaintiffs Bradley Allen and Kimberly Allen filed their Original Petition in the matter styled *Bradley and Kimberly Allen v. Horace Mann Lloyds and American Technologies, Inc.*, Cause No. DC-C201500376, in the 413th Judicial District Court of Johnson County, Texas. The lawsuit arises out of a claim Plaintiffs made for damages to their home under an insurance policy issued by Horace Mann.

2. Plaintiffs served Defendant Horace Mann Lloyds with a copy of the Original Petition on June 9, 2015.

3. Defendant Horace Mann filed its Original Answer to Plaintiffs' Original Petition on July 6, 2015.

4. Upon information and belief, Plaintiffs served Defendant American Technologies, Inc. ("American Technologies"), on June 2, 2015.

5. Defendant American Technologies filed its Plea in Abatement and Original Answer Subject Thereto to Plaintiffs' Original Petition on June 26, 2015.

6. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. §1446(a). A copy of this Notice is also concurrently being filed with the state court and served upon the Plaintiffs. As required by 28 U.S.C. § 1446(a), and Rule 81.1 of the Local Rules for the United States District Court of the Northern District of Texas, being filed simultaneously with the filing of this Notice of Removal is an Index of State Court Documents, which is attached hereto as Exhibit "A." A copy of the Case Summary is attached hereto as Exhibit "B." A copy of Plaintiffs' Original Petition is attached hereto as Exhibit "C." A copy of the Affidavit of Service as to Defendant American Technologies, Inc., is attached hereto as Exhibit "D." A copy of the Affidavit of Service as to Defendant Horace Mann Lloyds is attached hereto as Exhibit "E." A copy of Defendant American Technologies, Inc.'s Plea in Abatement and Original Answer Subject Thereto is attached hereto as Exhibit "F." A copy of Defendant Horace Mann Lloyds' Original Answer to Plaintiffs' Original Petition is attached hereto as Exhibit "G." Also included with this filing is a Supplemental Civil Cover Sheet.

7. Defendant Horace Mann files this Notice of Removal within 30 days of receiving Plaintiffs' pleading. *See* 28 U.S.C. §1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

8. Defendant American Technologies consents to this Notice of Removal as evidence by its Consent to Removal, which is attached hereto as Exhibit "H."

9. Venue is proper in this Court under 28 U.S.C. §1441(a) because this district and division embrace Johnson County, Texas, the place where the removed action has been pending and where the incident giving rise to this lawsuit took place.

## **II.**

### **BASIS FOR REMOVAL**

10. Removal is proper based on diversity of citizenship under 28 U.S.C. §§1332(a), 1441(a) and 1446.

#### **A. The Parties Are Of Diverse Citizenship**

11. Plaintiffs are, and were at the time the lawsuit was filed, residents of Johnson County, Texas, and citizens of the State of Texas. *See* Pls' Original Pet. ¶ 2, attached hereto as Exhibit "C."

12. Defendant Horace Mann is a "Lloyd's Plan" organized under Chapter 941 of the Texas Insurance Code. It consists of an association of underwriters, each of whom, at the time this action was commenced were, and still are, citizens and residents of the state of Illinois. Therefore, Defendant Horace Mann is a citizen and resident of the state of Illinois for diversity purposes.

13. Defendant American Technologies is a California corporation with its principal place of business in California and is a citizen of the State of California for diversity purposes.

14. Because Plaintiffs are citizens of Texas, Defendant Horace Mann is a citizen of Illinois, and Defendant American Technologies is a citizen of California, complete diversity of citizenship exists among the parties.

#### **B. The Amount in Controversy Exceeds \$75,000.00**

15. This is a civil action in which the amount in controversy exceeds \$75,000.00. In determining the amount in controversy, the court may consider "policy limits... penalties,

statutory damages, and punitive damages.” *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at \* 2-3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff’s case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co.*, 75 F. Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

16. Plaintiffs allege a variety of claims arising from damage to their property located at 1510 Clear Creek, Cleburne, Johnson County, Texas. Plaintiffs seek damages for breach of contract, violations of the Texas Deceptive Trade Practices Act, violations of the Texas Insurance Code, fraud, intentional infliction of emotional distress, and negligence. Plaintiffs specifically seek to recover mental anguish damages, economic damages, treble damages, attorney’s fees, pre- and post-judgment interest, and court costs. As such, Plaintiffs’ alleged damages exceed \$75,000.00.

#### **Conclusion and Prayer**

All requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. Accordingly, Defendant Horace Mann Lloyds hereby removes this case to this Court for trial and determination.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

/s/R. Tate Gorman

R. Tate Gorman

State Bar No. 24032360

Scott Rogers

State Bar No. 24064369

700 N. Pearl Street, 25<sup>th</sup> Floor

Dallas, Texas 75201

Telephone: 214.871.8200

Facsimile: 214.871.8209

Email: [tgorman@thompsoncoe.com](mailto:tgorman@thompsoncoe.com)

[slrogers@thompsoncoe.com](mailto:slrogers@thompsoncoe.com)

**COUNSEL FOR DEFENDANT  
HORACE MANN LLOYDS**

**CERTIFICATE OF SERVICE**

This is to certify that on the 9th day of July, 2015, a true and correct copy of the foregoing was delivered to the following counsel of record by electronic service and/or facsimile transmission and/or certified mail, return receipt requested:

D. Scott Cain  
Mark Hines  
Robert J. Masteller III  
CAIN & ASSOCIATES, P.C.  
508 N. Ridgeway Drive  
Cleburne, Texas 76033  
*Counsel for Plaintiffs*

Gregory M. Weinstein  
WEINSTEIN RADCLIFF LLP  
6688 N. Central Expressway, Suite 675  
Dallas, Texas 75206  
*Counsel for Defendant  
American Technologies, Inc.*

/s/R. Tate Gorman

R. Tate Gorman